

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 11, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES THOMAS BURKE,

Plaintiff,

v.

SPOKANE COUNTY SHERIFF JOHN
T. NOWELS, STATE OF
WASHINGTON ATTORNEY
GENERAL and SPOKANE COUNTY,

Defendants.

No. 2:24-CV-00103-MKD

ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING ACTION

By Order filed May 1, 2024, the Court directed Plaintiff James Thomas Burke, a Vermont prisoner currently housed in the State of Mississippi, to show cause why he should be permitted to proceed *in forma pauperis*. ECF No. 5. Plaintiff filed his first response on May 20, 2024, ECF No. 6, and a second response on June 10, 2024, ECF No. 7. Plaintiff is proceeding *pro se*. Defendants have not been served in this action.

In his first response, Plaintiff acknowledges the two “strikes” he acquired

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION - 1

1 under 28 U.S.C. § 1915(g) in case No. 2:22-cv-00004-MKD, and on appeal in Ninth
2 Circuit Court of Appeals case No. 22-35357. ECF No. at 1. He argues, however,
3 that he “knows of no other case filing in this courts lawful jurisdiction that would
4 amount to a third ‘strike’[.]” *Id.* (as written in original). In his second response, he
5 asserts that he “only has (2) two strikes with this Federal Court’s (9th) Circuit
6 Jurisdiction pursuant to” [Burke v. State of Washington, 9th Cir, Case-#22-35357,
7 AND ALSO Burke v. State of Washington, 9th Cir. Case-#2:22-cv-00004-MKD].”
8 ECF No. 7 at 1 (as written in the original).

9 Yet, the Court identified for Plaintiff the following three cases that were
10 dismissed as frivolous or malicious or for failure to state a claim. *See Burke v. State*
11 *of Washington et al.*, No. 2:05-cv-00245-CI (E.D. Wash. Mar. 20, 2006) (dismissed
12 with prejudice for failure to state a claim upon which relief may be granted), with no
13 appeal taken; *Burke v. State of Washington, et al.*, No. 2:22-cv-00004-MKD (E.D.
14 Wash. Apr. 19, 2022) (dismissed with prejudice as time-barred), Appeal No. 22-
15 35357 dismissed as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) on November 17,
16 2022 and Mandate issued December 9, 2022. Therefore, Plaintiff’s contention that
17 he has only two strikes is not supported by the Court’s records.

18 Having failed to demonstrate that he was “under imminent danger of serious
19 physical injury” when he filed the present complaint, the Court finds that Plaintiff
20 has failed to overcome the preclusive effects of 28 U.S.C. § 1915(g). Although

1 granted the opportunity to do so, Plaintiff did not pay the \$405.00 filing fee to
2 commence this action.

3 Accordingly, **IT IS ORDERED:**

4 1. Plaintiff's application to proceed *in forma pauperis*, **ECF No. 2**, is
5 **DENIED.**

6 2. This action is **DISMISSED WITHOUT PREJUDICE** for failure to
7 comply with 28 U.S.C. § 1914(a).

8 3. The Court certifies that any appeal of this Order would not be taken in
9 good faith and would lack any arguable basis in law or fact.

10 4. The Clerk's Office is directed to enter this Order, enter judgment,
11 provide copies to Plaintiff at his last known address, and **CLOSE** the file.

12 **DATED** June 11, 2024.

13 *s/Mary K. Dimke*
14 MARY K. DIMKE
15 UNITED STATES DISTRICT JUDGE
16
17
18
19
20